

MEMORANDUM OF AGREEMENT FOR THE JOINT USE OF FACILITIES BETWEEN
SCHOOL
AND
AFTER-SCHOOL PROGRAM

This Memorandum of Agreement ("Agreement") is made and entered into this ____ day of _____ between the _____ School, which is located at _____ in _____, Massachusetts ("School"); and _____, a corporation, organized under the laws of the Commonwealth of Massachusetts and having a principal place of business at _____ ("ASP").

WHEREAS, the School and ASP seek to articulate a vision for children and goals for the after-school program;

WHEREAS, the School and ASP seek to effectively and efficiently share use of the space in order to provide quality educational and child care environments for children at the School during the _____ school year;

WHEREAS, the School and ASP seek to establish procedures to encourage cooperative working relationships between the School and ASP personnel at all levels and to enable the quick resolution of issues relating to the use of shared space at the School.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the School and the ASP enter into this Agreement and agree as follows:

1. General Provisions Regarding After-School Program.

- A. ASP represents and warrants that it is licensed or licensed exempt by the Office for Child Care Services ("OCCS") to provide programs for children in grades _____ for the after-school program that will operate in the School for the _____ school year. A copy of the ASP's current license or exemption is attached hereto at Tab A.
- B. ASP will comply with M.G.L. c. 28, §1 enforcement standards and definitions for licensure or approval, and M.G.L. c. 28, §7 standards for licensure of school-age child care programs, and all regulations promulgated under M.G.L. c. 28, including without limitation those provisions regarding hiring staff; performing, at its own cost, Criminal Offender Records Information ("CORI") checks and complying with all applicable provisions of the Sexual Offender Registration ("SORI") and Community Notification law; and securing informed consent and permission slips in the home language from the parents/guardians of participating children that allow children to attend the after-school program and to travel off-site when attending the after-school program.

- C. ASP and the School agree that the operation of the after-school program is contingent upon a mutually agreed minimum enrollment of _____ children in the after-school program. ASP and the School further agree that the maximum enrollment in the after-school program will not exceed _____ children.
- D. ASP represents and warrants that the adult/child ratio for the after-school program will be 1 to 13 and that the ASP will strive to achieve a 1 to 10 ratio of adults to children.
- E. It is agreed that this Agreement shall be subject to any policies promulgated from time to time by the Superintendent of the Boston Public Schools, the School Committee for the City of Boston, as well as any OCCS regulations for school-age programs, or any other laws or regulations promulgated governing after-school programs.

2. Schedule for Use of Space at the School.

- A. ASP and the School agree that the ASP will be provided with full use of the _____ areas in the school between the hours of _____ on the following days: _____ during the _____ school year with the exception of legal holidays and when the School is closed due to inclement weather or emergency evacuations. ASP also acknowledges that the School may need to close the above identified space for maintenance, repair, or for other reasons of health, safety, and welfare. School agrees, to the extent practicable, to provide ASP with advance notice of any such closure of the space. If the ASP wishes to operate in the School building during school vacation periods or on staff development days, the ASP must, no later than thirty (30) days prior to the date of the proposed dates of operation, complete a separate Boston Public Schools Facilities Management Permit, and obtain the approval from the School and BPS Facilities Management to operate the ASP in the school building during the specified time period. If the ASP is not given approval to operate in the school building during a school vacation period (s) or on a staff development day(s), the School and ASP will discuss whether the program will operate in alternative space during these specified periods.
- B. ASP and School agree that on days in which the School has scheduled a special function or event to occur during the hours of operation of the after-school program in any of the rooms or facilities designated above in paragraph 2A, that the School and the ASP will arrange for alternative space in the School, if such space is available. The ASP will receive at least five (5) business days notice regarding a special function or event.
- C. ASP acknowledges that at all times, including the hours of operation of the after-school program, that the School will have access to the entire school and its facilities.

- D. ASP agrees that, for security reasons, the sole entrance for parents to pick-up their children from the after-school program will be through _____ of the School.
- E. School and the ASP agree to the following arrangement for the storage of materials needed by the ASP in connection with the operation of the after-school program: _____

- F. School and the ASP agree that the School will provide the ASP with access to a telephone and mailbox for the after-school program.

3. Procedures for Managing the Program

Staffing

- A. ASP represents and warrants that it will appoint a lead on-site representative (an OCCS-qualified Site Coordinator or Program Administrator) responsible for the supervision of use and for the tracking and handling of any issues relating to or arising out of the operation of the after-school program, including but not limited to any issues occurring under this Agreement ("School Site Coordinator"). The School Site Coordinator will be responsible for submitting the Administration Plan required by OCCS to the School.
- B. The School agrees that it will designate a lead on-site staff representative to be responsible for handling any issues relating to or arising out of the operation of the after-school program and for regularly communicating with the School Site Coordinator.
- C. ASP agrees that the School Site Coordinator will develop mechanisms for regularly communicating program information to the School principal, the School's designated on-site staff representative, and the ASP executive director and ASP personnel involved in this Agreement.

Facilities

- D. ASP shall complete a Boston Public Schools Facilities Management Permit prior to the commencement of the after-school program.
- E. School will ensure that the building is secured and locked up when the after-school program ends. In addition, School will designate a boy's bathroom and a girl's bathroom near the areas of the after-school program which will be kept clean and stocked for the ASP's hours of operation.
- F. School will ensure space used by the ASP is cleaned prior to the start of program operation each day. ASP agrees that its after-school program staff will be responsible for clean up on a daily basis of its activities and to return the room and other facilities used to the same condition as the rooms and facilities were in prior to use by the after-school program; turning off all lights and electronic equipment used during the after-school program; organizing all trash generated during the after-school program into a centralized disposal site; closing all doors and windows

opened by the after-school program; and ensuring that no school furniture or materials are taken or moved from the rooms or facilities in which they were located prior to use by the after-school program.

- G. School agrees to provide the ASP with the following designated display areas for the purposes of displaying work of the children participating in the after-school program:_____.
- H. Upon receipt of a written request from the ASP, BPS Facilities Management will provide the ASP with copies of the fire and building permits and any updates for purposes of ASP's OCCS licensure.

Costs

- I. ASP agrees to make restitution for repair to rooms, facilities, equipment or other school property that is damaged, stolen, or missing from the School after use by the after-school program.
- J. ASP will be responsible for all costs and expenses related to and incurred in connection with the operation of the after-school program, including without limitation, materials, staff salaries, and supplies.

Snacks

- K. Children enrolled in the after-school program will receive an after-school snack, either through the National School Lunch Program (NSLP) or the after-school program itself. If participating in the NSLP, upon ASP's completion of training and necessary paperwork, BPS, through its Department of Food and Nutrition Services, will distribute snacks to the ASP. ASP agrees to complete all additional necessary paperwork required by BPS Department of Food and Nutrition Services for reimbursement from NSLP.

Data

- L. ASP will collect and maintain basic demographic data on children in the program including their gender, age, neighborhood, and school and grade in which they are enrolled. This data will be accessible to the Boston Public Schools and the City of Boston at their request for the purposes of understanding which children are currently being served after-school and what their needs are.

Conflict Resolution

- M. When issues under this Agreement cannot be resolved, the issues will be referred to the School principal and the executive director of the ASP in order for them to work together to come to a resolution that is mutually agreeable to both the School and the ASP. If, despite the best efforts of the parties, a mutually agreeable resolution cannot be achieved by the School and ASP after thirty (30) days, either party may terminate this Agreement, for any reason or no reason at all, by issuing written notice to the other party, such notice shall be effective immediately. This provision shall not limit the School's rights and remedies in the event of the ASP's default or noncompliance with the terms and provisions of this Agreement and/or the School's right to immediate termination of this Agreement pursuant to paragraph 4P due to the

revocation or other adverse action with regard to the ASP's OCCS license or license exemption.

4. General Conditions

- A. ASP shall not assign, delegate, subcontract, or in any way transfer any interest in this Agreement or obligation under this Agreement without the prior written consent of all parties to this Agreement.
- B. The Agreement is made subject to and shall be construed in accordance with the laws of the Commonwealth of Massachusetts.
- C. ASP agrees to comply strictly with all applicable provisions of local, state and federal law, regulations, and codes regarding the operation and management of after-school programming, fire, safety, and civil rights, and shall provide, at its sole expense, all necessary licenses, permits, or other authorizations required by the City of Boston, the Commonwealth of Massachusetts, including OCCS, and any other governmental agency with proper jurisdiction.
- D. The attention of the parties is called to M.G.L.c. 268A (the Conflict of Interest Law). No party shall act in collusion with any other party, person, or entity to circumvent such law.
- E. ASP agrees not to discriminate in connection with its work under this Agreement against any employee or applicant for employment or against any child participating in the after-school program or applying to participate in the after-school program because of handicap, race, national origin, age, sex, gender, sexual orientation, ethnicity, or religion.
- F. ASP agrees to assume defense of and hold the City of Boston, the Boston Public Schools, and the School and any of their respective officers, agents, and employees harmless from all suits and claims against them arising from or relating to any acts or omissions by ASP or its officers, agents, employees, or anyone acting in connection with the ASP's performance under this Agreement.
- G. Without limiting the ASP's obligation to hold the City of Boston, Boston Public Schools and the School and any of their respective officers, agents, or employees harmless from all suits and claims arising from or relating to any acts or omissions by the ASP or its officers, agents, employees, or anyone acting in connection with the ASP's performance under this Agreement, the ASP represents and warrants that it will maintain Comprehensive General Liability Insurance endorsed for Independent Contractor and Accident Coverage with a limit of not less than \$1,000,000.00 (one million dollars) per claim and \$2,000,000.00 (two million dollars) in the aggregate. ASP also represents and warrants that it will maintain such Worker's Compensation Insurance as may be reasonably necessary and required to protect ASP from claims under General Laws 152 (The Worker's Compensation Law). Such insurance will be provided by an insurer(s) licensed to do business in the Commonwealth of Massachusetts. Certificates evidencing such insurance is in full force and effect shall be primary to, and not contributing with, any other

insurance maintained by either the City of Boston or Boston Public Schools, and shall name the City of Boston, Boston Public Schools, and the School as additional insureds.

- H. It is understood and agreed that the City of Boston, Boston Public Schools, and School are self-insured. All issues regarding liability by the City of Boston, Boston Public Schools, and School shall be governed by M.G.L. c.258. To the extent authorized and permitted under M.G.L.c. 258, the City of Boston, the Boston Public Schools and the School agree to assume defense of and hold the ASP and any of their respective officers, agents and employees harmless from all suits and claims against them arising from or relating to any acts or omissions by the City of Boston, the Boston Public Schools and the School or its officers, agents, employees or anyone acting within the scope of their employment in connection with the City of Boston, the Boston Public Schools and the School's performance under this Agreement.
- I. Nothing herein shall create or be deemed to create a relationship of agency, joint venture, or partnership between ASP and the School. Neither party shall have the power to bind or obligate the other in any manner except as expressly provided in this Agreement.
- J. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws, then the remainder of the Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. In lieu of any such illegal, invalid, or unenforceable clause or provision, there shall be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, or enforceable.
- K. This Agreement may not be amended except by an instrument in writing signed by the School and the ASP. No provision of this Agreement shall be deemed to be waived by either party unless such waiver is in writing signed by all parties. The terms and conditions contained in this Agreement shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors and assigns in interest and legal representatives, except as otherwise herein expressly provided.
- L. This Agreement constitutes the entire agreement between the School and the ASP regarding the subject matter hereof and supercedes all oral statements and prior writings relating thereto. Except for those set forth in this Agreement, no representations, warranties, or agreements have been made by the School or the ASP to the other with respect to this Agreement or the obligations of the School or ASP in connection therewith.
- M. ASP and the School agree to act in good faith and to use their best efforts to implement the terms of this Agreement.

- N. Either the School or the ASP may terminate this Agreement immediately by issuing a written notice to the other party if there is any adverse action, including revocation or loss of the ASP's OCCS license or license exemption.
- O. All notices regarding either breach or termination of this Agreement shall be given in writing by certified mail/return receipt requested, to the person at the addresses set forth below. Notices will be deemed received three (3) business days after being sent by certified mail:

To ASP:

TO SCHOOL:

with a copy to:

Office of Legal Advisor
Boston Public Schools
26 Court Street, 7th Floor
Boston, MA 02108

The parties shall rely upon the addresses set forth above unless notified in writing of a change. All such notices shall be effective upon receipt or refusal to receive.

- P. This Agreement is effective upon signing and will continue in effect for the school year _____. The parties hereto agree to review this Agreement prior to April 30, _____ for the purpose of determining whether to extend or renew the Agreement and to negotiate any and all modifications to the terms and conditions of this Agreement.
- Q. The article headings throughout this Agreement are for reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

In WITNESS WHEREOF, the parties have, by their duly authorized officers, executed this Memorandum of Agreement under seal.

School

By: _____

Principal

APPROVED:

Thomas W. Payzant
Superintendent
Boston Public Schools

ASP

By: _____

Title: _____